SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE

TELEPHONE:
(202) 347-7170
FAX:
(202) 347-3619
WRITER'S E-MAIL:
cam@sloverandloftus.com

198554

RECEIVED
MAY 16 2000
MAIL
MANAGEMENT
STB

May 16, 2000

BY HAND DELIVERY

Office of the Secretary
MAY 16 2000
Part of
Public Record

Honorable Vernon L. Williams
Surface Transportation Board
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Ex Parte No. 582 (Sub-No. 1),
Major Rail Consolidation Procedures

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of the Comments of Alliant Energy Corporation. Also enclosed is a 3.5-inch diskette containing the text of the Comments in WordPerfect format.

Please acknowledge receipt of the enclosed by stamping and returning to our messenger the enclosed duplicate of this letter.

Sincerely,

Christopher A. Mills

Christopher A. Mills

CAM/mfw
Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

RECEIVED
MAY 16 2000
MAIL
MANAGEMENT
STB

MAJOR RAIL CONSOLIDATION PROCEDURES	)	Ex Parte No. 582 (Sub-No. 1)

Office of the Secretary
MAY 16 2000
Part of
Public Record

COMMENTS OF ALLIANT ENERGY CORPORATION

Alliant Energy Corporation ("Alliant") submits the following comments in response to the Board's Advance Notice of Proposed Rulemaking ("ANPR") served March 31, 2000.

I. BACKGROUND AND IDENTITY OF INTEREST

Alliant is an investor-owned public utility holding company headquartered in Madison, Wisconsin. Alliant's operating subsidiaries, Wisconsin Power and Light Company, IES Utilities, Inc., and Interstate Power Company, provide electric service to more than one million customers in a 54,000 square-mile service territory that includes parts of Iowa, Illinois, Minnesota and Wisconsin.

Alliant is a major consumer and shipper of western coal, principally low-sulfur "compliance" coal produced in the Powder River Basin of Wyoming ("PRB"). In total, Alliant's subsidiaries burn a total of approximately 14 million tons of PRB coal annually in power plants that produce about 3600 megawatts of electricity.

Alliant relies exclusively on rail service to transport PRB coal to six large coal-fired power plants in Iowa and Wisconsin. Although two railroads (Union Pacific Railroad Company ("UP") and Burlington Northern and Santa Fe Railway Company ("BNSF")) serve most of the PRB mines, these power plants are served exclusively at destination by a single rail carrier. In several cases, the destination carrier is either BNSF or UP, which means that the origin carrier has bottleneck monopoly power over transportation pricing.

The cost of transportation represents well over half of the delivered cost of coal at Alliant's rail-served power plants. Alliant is also completely dependent on rail transportation to deliver the needed coal supplies in a timely manner. Thus, rail prices and rail service are of great importance to Alliant.

Alliant believes that further consolidation of the already highly-concentrated rail industry through additional mergers and acquisitions will exacerbate existing competitive problems in this industry. Alliant also has experienced rail service problems in the wake of the UP/CNW and UP/SP mergers, and it is concerned that additional mergers will lead to more such problems in the future.

Alliant commends the Board for deciding to revisit its rail merger policies. Alliant is joining with the Western Coal Traffic League, American Public Power Association, National Rural Electric Cooperative Association, and several other individual electric utility coal shippers (the "Coal Shippers") in filing joint Comments that address competitive and service problems resulting from major rail mergers, and that propose specific changes in the Board's merger policies that would address these problems. In addition, Alliant is a member of the Alliance for Rail Competition, which is also submitting Comments on the need for additional competition in the rail industry.

Alliant is filing these separate Comments to amplify the broader context in which the Board's merger policy must be viewed, and to address one particularly problematic specific competitive issue, namely, the effect of mergers on railroad bottlenecks.

II. <u>CONTEXT FOR A REVISED MERGER POLICY</u>

The Board's ANPR characterizes its current merger policy as an outgrowth of the poor condition of the railroad industry when the Staggers Act was passed in 1980. The policy was premised on the idea that:

> The widespread financial distress faced by our nation's rail carriers in the period leading up to enactment of that statute, and the associated deteriorating service levels faced by their customers, were due in large measure to an overly restrictive regulatory system that unduly limited the ability of railroads to effectively rationalize what was at the time a significant degree of excess rail infrastructure."

(ANPR at 3.) The Board goes on to state that its present merger regulations, which were "aimed at encouraging railroads to formulate proposals that would help rationalize excess capacity so long as competition, access to essential service, and other public interest goals were not degraded," represented a "proper and reasoned response to the serious problems affecting railroads and their customers at the time." (*Id.*)

The railroad industry is not the same today as it was in 1980. It no longer has significant amounts of excess infrastructure (although the present infrastructure is not used as efficiently as it should be). Some of the symptoms cited by the Board have been treated, but not the causes that continue to result in deteriorated rail service and a rail industry whose equity is not viewed with favor by Wall Street. If the Board is to improve the effects of its regulatory policies, it needs to refine its analysis of the dynamics of the rail industry. Its merger policy therefore must help treat the causes of the railroads' inability to attract new freight traffic.

Even while reversing the industry decline that was in full flower when the Staggers Act was passed, the railroads have continued to lose markets to other forms of transportation and failed to gain new markets. In general the railroads have continued to serve industries where little value is added to their products prior to shipping, where timeliness of delivery is of relatively little value compared with industries that use trucks as their primary transportation mode, and where delivery to geographically dispersed destinations is not required. As a consequence, growth in overall rail traffic volume has remained stagnant compared to other modes.

Both the railroads' own marketing strategy and Board's merger policy have been driven by the proposition that increasing efficiency (in the form of lower costs) will allow the railroads to increase profitability and improve service levels. But in most markets where competition flourishes, profitability is not determined just by lowering costs. Rather, it is derived from identifying the attributes of products and services that allow customers to create and capture value. The railroads must be encouraged to identify those attributes more quickly and more accurately; only then can they serve their customers well (and thereby increase both throughput volume and profitability). The rail industry's commitment to a "one size fits all" strategy to reduce its costs has been a major factor in the industry's inability to attract the new markets necessary to make effective use of the existing infrastructure.

Rail mergers have traditionally been viewed primarily as a means of reducing variable cost (and thereby increasing efficiency). However, it is unlikely that further mergers will create significant additional savings. Indeed, the write-ups in the value of the assets of recently-merged rail carriers resulting from acquisition premiums, and the increased costs resulting from post-merger service problems, confirm that the traditional model is no longer valid.[1] There needs to be more emphasis on increasing throughput than on reducing (or consolidating control of) infrastructure. The Board can start to address these issues by revising its merger policy in ways that begin to inject more competition into the rail industry than presently exists. Competition helps encourage new ways of thinking and new ways of creating value for non-traditional (i.e., new) rail customers.

In evaluating prior merger proposals, the Board has refused to look beyond the preservation of existing competitive options for shippers who went from two rail competitors to one (monopoly) carrier as a result of a merger. Even then, if the Board could not exactly replicate pre-merger competitive options, its policy was to err on the side of less, rather than more, competition. The result is not only a highly concentrated rail industry, but one that emphasizes cost reductions rather than innovation and service improvements to drive market share increases. This is not the way to create the climate necessary to change the railroads' present operational and marketing model.

---

[1] The Board's recent decision to permit merging railroads to include write-ups in asset values resulting from acquisition premiums in their rate base (Finance Docket No. 33726, *Western Coal Traffic League v. Union Pacific Railroad Company* (served May 12, 2000)) represents a step backward. Railroads are the only regulated industry that is permitted to include asset write-ups resulting from mergers in its rate base. Like electric utilities and other regulated industries that are starting to conform to a competitive model, Railroads need the opposite kind of incentive if they are to serve their existing and new customers in a manner that encourages overall growth.

It is time for the Board to start viewing rail mergers as opportunities for increasing competition. The changes in the Board's merger policy proposed in the joint Comments of the Coal Shippers' coalition would be a good start in this direction.

III. WESTERN RAILROAD BOTTLENECKS

Turning to a more specific competitive issue, the Board has recognized in its ANPR that rail bottlenecks have become a particular concern to captive shippers. Bottlenecks are of increasing concern to the electric utilities who purchase coal from the Powder River Basin because of mergers involving the two railroads (BNSF and UP) that serve this important coal-producing region. If one of the two PRB origin carriers also serves a power plant as a bottleneck destination carrier, it has the ability to foreclose competition from the other origin carrier under the Board's 1996 Bottleneck decision.[2] A captive coal shipper's inability to obtain bottleneck relief seriously impacts its ability to obtain the benefits of the two-carrier origin competition that otherwise exists for transportation of coal from mines in the PRB.

Mergers involving one of the PRB origin carriers exacerbate the bottleneck problem because they often result in replacing an independent or "neutral" destination bottleneck

---

[2] *See* Central Power & Light Co. v. Southern Pac. Transp. Co., Nos. 41242, et al. (December 32, 1996), clarified (April 30, 1997).

carrier with a carrier that also serves the origins. An independent destination carrier that does not serve the mine origins usually is indifferent to which of the two PRB-serving carriers originates the coal. Although an independent destination bottleneck carrier is still able to price "above the market," the shipper none the less is able to take advantage of the competition between the non-bottleneck origin carriers.

This is demonstrated by Alliant's own experience. Alliant's subsidiary Wisconsin Power and Light Company ("WPL") operates two large coal-fired power plants that are subject to destination bottlenecks. One plant, the Columbia Energy Center near Portage, WI is served exclusively by the Canadian Pacific ("CP"), which is not affiliated with either of the two PRB origin carriers. The other, the Edgewater Generating Station at Sheboygan, WI, is served exclusively by one of the PRB origin carriers (UP).

CP interchanges unit coal trains with both BNSF and UP at the Twin Cities. CP has been willing to enter into a separate contract with WPL for transportation of PRB coal over CP's for its "bottleneck" portion of the haul between the Twin Cities and the Columbia plant, a distance of about 230 miles. This contract enables WPL to use either BNSF or UP to transport PRB coal from Wyoming to the Twin Cities (a distance of about 1000 miles).

The result is that WPL has been able to take advantage of the origin competition between BNSF and UP that exists for 80 percent of the total distance between the PRB mines and the Columbia plant. This competition has resulted in rates for the portion of the Columbia coal movement west of the Twin Cities that are substantially lower, in cents per revenue ton-mile, than the CP rate for the bottleneck portion of the movement east of the Twin Cities.

The situation at the Columbia plant is to be contrasted with the situation at the Edgewater plant. UP's status as both origin carrier and destination bottleneck carrier at Edgewater enables it to use its destination monopoly to foreclose competition by BNSF under the Board's Bottleneck rules. As a result, UP's single-line rate for transportation of PRB coal to Edgewater is between 20 and 30 percent higher than the combined freight rates under the BNSF and CP contracts for transportation of PRB coal to the Columbia plant on a cents per revenue ton-mile basis. (Both movements involve unit trains consisting of private aluminum cars furnished by WPL.)[3]

Future mergers among the remaining Class 1 railroads will undoubtedly involve CP, which probably will cause CP to lose

---

[3] Due to the absence of competition at Edgewater, after the recent expiration of a contract with UP, WPL filed a maximum-rate complaint against that carrier. The complaint is presently pending before the Board in Docket No. 42051, Wisconsin Power and Light Company v. Union Pacific Railroad Company. Alliant firmly believes it would have been able to negotiate acceptable commercial terms for a new Edgewater contract (either with UP alone or with BNSF and UP), and would not have had to resort to a regulatory remedy, if bottleneck relief had been available.

its independent or neutral status with respect to PRB coal movements. For example, if BNSF and CN follow through on their announced intention to combine, it is inevitable that CP will merge with UP. This "downstream" impact of a BNSF/CN merger would enable UP to foreclose competition from BNSF at Alliant's Columbia plant, just as it does now at Edgewater, with the result that UP could charge the same kind of monopoly prices at Columbia that it does today at Edgewater.

IV. NEEDED RULE CHANGES

In its ANPR, the Board has suggested changes in its present bottleneck rules that appear designed to help remedy competitive problems likely to arise from future major rail mergers and consolidations.

The Board's Bottleneck rules contain two prerequisites for obtaining a challengeable bottleneck rate where a bottleneck destination carrier (for example) also serves the competitive origin. First, the shipper must obtain a contract for transportation over the competitive portion of the route. Second, after the shipper obtains such a contract, it must also obtain an order from the Board establishing a new through route at a reasonable interchange point that allows transportation under the contract to be combined with common carrier transportation over the bottleneck portion of the movement. To obtain such a routing order, the shipper must file a complaint under the Board's competitive-access rules, which require it to demonstrate anticompetitive conduct on the part of the bottleneck carrier.

These two requirements make bottleneck rate relief unavailable as a practical matter. To Alliant's knowledge no shipper has ever prevailed in a competitive-access complaint. In addition, the requirement that a shipper must obtain a contract for the competitive part of a movement in advance of obtaining a bottleneck rate is unrealistic -- particularly for PRB coal movements. The two PRB origin carriers (BNSF and UP) are adamantly opposed to bottleneck rate relief, and neither wants to open its captive utility coal customers to competition from the other.

Alliant's own experience confirms this. Alliant has requested BNSF to provide it with a contract proposal for transportation of PRB coal from the mine origins to Chicago, where BNSF interchanges with UP, which Alliant could then use to try to obtain a routing order from the Board and (in the unlikely event such an order were granted) a bottleneck rate from UP for transportation over the remaining 160 miles between Chicago and the Edgewater plant. BNSF refused to provide any such contract proposal, thereby foregoing an opportunity to compete for the long-haul transportation of upwards of 2.5 million tons of coal annually.

In its ANPR, the Board has suggested two changes in its present Bottleneck rules to address these problems. First, the

Board has proposed that merger applicants be required "to offer, on request, contracts for the competitive portion of joint-line routes when the joint-line partner has a bottleneck segment." (ANPR at 7.) Second, the Board has proposed that merger applicants be required "to provide a new through route at a reasonable interchange point whenever they control a bottleneck segment and the shipper has entered into a contract with another carrier for the competitive segment." (ANPR at 8.) According to the Board, the latter proposal is intended to permit shippers who have entered into such contracts to seek bottleneck rate relief immediately, without having to file a competitive-access complaint to obtain a routing order. (*Id.*)

The second part of the Board's proposal apparently would resolve a significant impediment to bottleneck rate relief in the context of a merger involving one of the two PRB origin carriers and an independent or neutral destination carrier. If this is the Board's intent, Alliant supports this aspect of the proposal. However, the first part of the Board's proposal, which purports to "address shipper concerns that competitive-segment carriers may be unwilling to enter into contracts that would enable shippers to obtain bottleneck rate relief before the Board" (ANPR at 7-8), is wholly inadequate and simply does not remedy the problem.

Merely requiring merger applicants to offer contracts for the competitive portion of a movement involving a bottleneck line segment, without more, is not enough. The PRB origin carriers have been unequivocal in expressing their distaste for bottleneck relief, and they are unlikely to offer contract proposals on terms that will be acceptable to a shipper. They do not want to change the *status quo*, in which they do not have to allow competition for the business of their captive customers.

One obvious way a competitive-segment merger applicant could perpetuate the existing situation under the Board's proposal would be to offer contract rates that are too high to be competitive (under the assumption that its "competitor" will return the favor when the shoe is on the other foot). In addition, the competitive-segment carrier would be free to offer other terms and conditions that it knows will be unacceptable to the shipper -- such as a very long contract term, a refusal to provide any service commitments, or a requirement that the shipper commit all its tonnage to the carrier regardless of the ultimate level of the rate for transportation over the bottleneck segment. The proposed remedy thus would be completely ineffective in the real world unless the Board wants to get involved in the minutiae of rail/shipper contracting by arbitrating contract terms and conditions.

The only way to provide a meaningful bottleneck remedy is to allow the shipper to obtain a bottleneck rate (and seek bottleneck rate relief from the Board if necessary) *before* it enters into a contract with a competitive-segment carrier. Only then will the shipper have a fighting chance of getting the competitive carrier, knowing that it is not being used as a stalking horse and that the prospect of handling additional traffic is real, to provide a competitive contract proposal.

V. CONCLUSION

Specific rule changes designed to address the problems described above -- as well as service problems likely to result from further rail mergers involving Class 1 carriers and problems related to the Board's inappropriate inclusion of asset value write-ups resulting from acquisition premiums in the carriers' rate base -- are set forth in the joint Comments being filed by the Coal Shippers coalition (including Alliant). Alliant urges the Board to incorporate these proposed rule changes in its Notice of Proposed Rulemaking in this proceeding which is to be issued in the fall of this year.

Respectfully submitted,

Christopher A. Mills
Daniel M. Jaffe
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Attorneys for Alliant Energy Corporation

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: May 16, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2000, I caused a copy of the foregoing Comments to be served on all persons designated as a Party of Record or Member of Congress in the Board's decisions in this proceeding served April 28 and May 10, 2000, by first-class United States Mail.

Christopher A. Mills